



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Lucas Place, Ltd.

File: B-235423

Date: August 30, 1989

DIGEST

Contracting agency properly canceled solicitation for leased space where the agency determined that several interested potential offerors which had proposed buildings capable of meeting the solicitation's requirements were rejected during a presolicitation market survey, and that resoliciting the procurement with a later occupancy date will increase competition and assure full and open competition.

DECISION

Lucas Place, Ltd., protests the cancellation of solicitation for offers (SFO) No. MO88-248, issued by the General Services Administration (GSA), for leasing approximately 56,000 net usable square feet of office space to house the Regional Office of the Department of Housing and Urban Development (HUD) in the Kansas City metropolitan area. Lucas Place contends that canceling the SFO was not clearly in the government's interest.

We deny the protest.

The SFO was issued on October 25, 1988, based on a request for leased space made by HUD on July 27, 1988. The building at HUD's current location, in Kansas City, Missouri, does not meet government fire safety requirements and standards for quality office space, and the lease was due to expire on January 31, 1990. HUD requested GSA to acquire 55,735 net usable square feet of office space and 14 parking spaces in the Kansas City metropolitan area, which included both the states of Kansas and Missouri, by the lease's expiration date. In accordance with GSA regulations (48 C.F.R. § 570.201), GSA conducted a market survey which included

046366/139447

publicizing the lease requirements in a local newspaper, sending notices to members of the real estate community, and physically inspecting 45 potential locations.

The GSA Realty Specialist who inspected these locations, which included proposed new construction sites and existing structures, determined that many were unacceptable for various reasons. In some cases, the specialist concluded that the locations did not meet the SFO's neighborhood location criteria.^{1/} The specialist determined that 15 proposed sites met the proposed SFO's minimum requirements and GSA provided these property owners with a copy of the SFO.

On the closing date for the receipt of initial offers, GSA received offers from those property owners which had been provided a copy of the SFO, and from six additional offerors one of whom was the owner of one of the previously rejected sites. After conducting negotiations with 13 offerors whose offers were determined to be in the competitive range and receiving best and final offers (BAFOs), on April 11, 1989, GSA submitted the contract file to the GSA Office of the Inspector General for advisory review of the proposed award to the low acceptable offer.^{2/} Lucas Place had not participated in the market survey, but was among the offerors determined to be in the competitive range and it had submitted a BAFO; however, it was not the low offeror. On April 14, 1989, based on a preliminary audit, the Inspector General recommended that the lease not be awarded

^{1/} The SFO provided that:

"Space must be located in a prime commercial office district with attractive, prestigious, professional surroundings with a prevalence of modern design and/or tasteful rehabilitation in modern use"

^{2/} The protester argues that the purpose of the review was solely to determine whether or not it was appropriate to award the contract to the low offeror and that the audit findings and recommendations should only have afforded GSA a basis for not awarding the contract to that offeror, instead of providing a basis to cancel the SFO. However, the official audit report from the Inspector General's office states that the purpose of the review was to determine whether the leasing action was made in accordance with applicable laws, regulations, policies, and procedures and not solely to determine the propriety of award to the low offeror.

due to three major discrepancies which occurred during the procurement process. Two of these discrepancies are not relevant to this protest. However, the Inspector General determined that the Realty Specialist neither properly documented the results of the market survey, nor consistently applied the SFO's neighborhood location criteria to all of the properties. In particular, the Inspector General found that the Realty Specialist excluded several proposed sites for not meeting the neighborhood location criteria that were located in the same neighborhood as sites that were determined to meet the criteria. Based upon the Inspector General's preliminary review, the GSA Regional Administrator found that the results of the market survey were not adequately documented and determined that cancellation of the SFO was in the government's best interest because competition may have been limited unnecessarily during the market survey. In letters dated April 26 and 27, 1989, GSA notified offerors of the decision to cancel the SFO.

After the SFO was canceled, the contracting officer reinspected the proposed buildings which had been found unacceptable by the Realty Specialist and determined that four of those buildings met the neighborhood requirements and had the potential to meet all other SFO requirements. GSA reports that it has begun resoliciting the requirement on essentially the same terms except that the occupancy date has been extended by 1 year to allow all the erroneously excluded building owners the opportunity to submit proposals, and to ensure that owners proposing new construction and renovated space will have the opportunity to compete.

Federal Acquisition Regulation (FAR) § 15.608(b)(1) provides that a procuring agency may reject all proposals received in response to a solicitation if cancellation is clearly in the government's interest. Lucas Place contends that cancellation was not clearly in the government's interest because there was insufficient evidence to show that competition was adversely affected by the market survey. Lucas Place argues that GSA extensively advertised the procurement and points out that property owners that were rejected still submitted proposals.

Lucas Place further argues that the comments of the Realty Specialist at a bid protest conference held by our Office and GSA's report contradict GSA's assertion that inconsistencies in applying the neighborhood location criteria resulted in improperly excluding potential properties. The

Realty Specialist stated that potential properties were evaluated utilizing three criteria, not just location: (1) Neighborhood Location; (2) Quality and Appearance of the Building; and (3) Fire safety. Lucas Place points out that with respect to one of the buildings that GSA reports was erroneously excluded, the agency report shows that the specialist determined that it did not meet the SFO's quality and fire safety criteria, which was a legitimate basis for eliminating a building located in the same neighborhood as a building which satisfied the location requirement. Thus, Lucas Place argues that the four properties were properly eliminated for reasons other than neighborhood location.

Lucas Place contends that the actual reason that GSA canceled the SFO, as evidenced by its response to the protest, was to extend the occupancy date in order to permit sufficient time for offerors proposing new construction to compete. Lucas Place speculates that one of the reasons that the Inspector General recommended no award to the low offeror was because it offered new construction and that it was unlikely that a newly constructed building would be available by the January 1990 occupancy date. Lucas Place also points out that all of the offerors in between it and the low offeror also proposed new construction. Therefore, Lucas Place argues that GSA actually canceled the SFO because it did not like the results of the procurement, and not because of a faulty market survey.

In a negotiated procurement such as this, the contracting officer has broad discretion in deciding whether to cancel a solicitation after the receipt of offers and to do so the contracting officer need only have a reasonable basis as opposed to the cogent and compelling reason required for cancellation of a solicitation where sealed bids have been opened. American Management Co., B-228279, B-228280, Jan 15, 1988, 88-1 CPD ¶ 38; CooperVision, Inc., B-229920.2, Mar. 23, 1988, 88-1 CPD ¶ 301. A reasonable basis to cancel exists when a new solicitation presents the potential for increased competition or cost savings. Bell Indus., Inc., B-233029, Jan. 25, 1989, 89-1 CPD ¶ 81.

Further, under the Competition In Contracting Act of 1984 (CICA), 41 U.S.C. § 253(a)(1)(A) (Supp. IV 1986), contracting agencies are required to take positive, effective steps toward assuring that all responsible sources are permitted to compete for property and services by obtaining "full and open competition" through the use of competitive procedures. See Frank Thatcher Assocs., Inc., 67 Comp. Gen. 77 (1987), 87-2 CPD ¶ 480. "Full and open" competition is defined as

meaning that all responsible sources are permitted to submit sealed bids or competitive proposals on the procurement. 41 U.S.C. §§ 259(c) and 403(7). The legislative history of CICA further explains the term to mean that "all qualified vendors are allowed and encouraged to submit offers . . . and a sufficient number of offerors is received to ensure that the government's requirements are filled at the lowest possible cost." H.R. Rep. No. 1157, 98th Cong., 2d. Sess. 17 (1984).

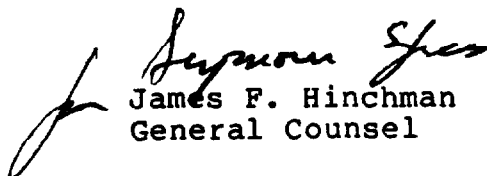
Here, the contracting officer determined that four known qualified potential offerors were not provided with copies of the SFO, and thus were discouraged from competing. Lucas Place argues none of the rejected property owners were advised not to submit offers, and one actually did submit an offer. However, we note that this offer was excluded from the competitive range apparently simply on the basis of the market survey recommendation. Given GSA's concern that its erroneous actions resulted in less competition than was potentially available, we think GSA clearly had a reasonable basis to cancel.

Lucas Place questions whether the four properties were actually improperly excluded. The contracting officer, a former GSA Realty Specialist for several years who was responsible for the Kansas City area, inspected the four properties and determined not only that they met the neighborhood requirements but that all either met or had the potential to meet all other requirements of the SFO. Thus, even though it appears from the market survey that some of the properties may have been excluded for not meeting the SFO's quality requirements and fire safety requirements, as opposed to neighborhood location requirements, the contracting officer has explicitly determined that none of these properties, including the one building that did not meet fire safety requirements, should have been eliminated from the competition.

Finally, Lucas Place's belief that the Inspector General recommended no award to the low offeror because it proposed new construction and that GSA canceled the SFO in order to permit offerors proposing new construction the opportunity to compete is not supported by the record. GSA reports that the decision to extend the occupancy date for another year occurred after the decision to cancel the SFO. GSA reports that, at this late date, it is unlikely that any offeror could meet the original occupancy date and the government has determined that it no longer requires a January 1, 1990 occupancy date. Although Lucas Place contends that HUD has

not changed its requirement, GSA is the agency responsible for acquiring leased space and Lucas Place has not demonstrated that GSA's decision to change the occupancy date by 1 year is unreasonable, or that it was the actual reason for the cancellation.

The protest is denied.


James F. Hinchman
General Counsel